FOR MYSORE STATE

H. E. L. A (1956.) Department.

Mg SERIES.

G.O. No. 530 Edn

Dated 21 — 3 — 56

1st Reference
No HH 171 CSH 57

[Despatch Abstract.]

Establishment - Ele. Edn - Pl. cl, Mangalore - re. Sri. Muhammad Haroon, Asst - Supervisor under suspension. — Permission to retrieve — Dis. assessment of Provident Fund amount — Instructions issued.

From

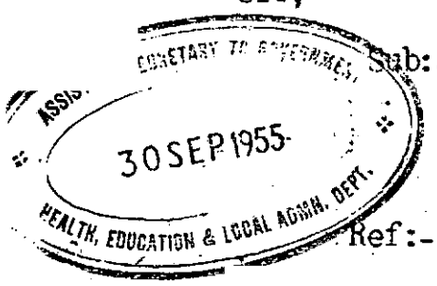
Sri J. Sivanandam, I.A.S.,
Inspector of Ml.Cls and Local Boards, Madras-1.

To

The Secretary to Government,
Health, Education and Local Administration Department,
Madras.

R.O.C.No.12229/55 dated 24.9.55.

Sir,



Sub: Establishment--Mangalore Municipal Council--Sri G. Md. Haroon--School Supervisor under suspension - Permission to retire etc..Payment of subsistence allowance--Instructions requested.

Ref:- From the Municipal Commissioner, Mangalore, No.22534.54 dated 16.3.55 and 14.7.55.

One Sri G. Muhammad Haroon, School Supervisor, Mangalore was kept under suspension by the Commissioner on receipt of a report from the Inspector of Police that he has been arrested in connection with the South Kanara treasury defalcation case. Sri G. Mouhammad Haroon had borrowed a sum of Rs.8,000/- from a school teacher Mrs. H.S. Roberts, who is a subordinate. This was apprehended to be the Government money as the husband of the said teacher, an accountant, in the Collector's office was involved in the case. On 5.2.54 Sri G. Muhammad Haroon attained the age of superannuation. It was doubtful whether he could be continued to be kept under suspension even after his attaining the age of superannuation as the proceedings against him in the court was pending. On this Government were addressed and in G.O. No.128 dated 1.2.55, Government were pleased to issue (in super-session of the orders in G.O.No.1462 dated 9.7.45) instructions that a subordinate, against whom departmental proceedings are pending or are in contemplation should not be allowed to retire either on application or on his attaining the age of superannuation, but should be continued to be kept under suspension until the departmental proceedings are concluded and final orders passed. It was also ordered that the person kept under suspensio should be paid subsistence allowance till the date on which final orders are passed on charges against him, and if he is eventually exonerated he should be granted full pay upto the date on which final orders are passed and he should be retired with effect from that date and the subsistence allowance already paid should be adjusted towards the pay.

2) Instructions were issued to the Municipal Commissione Mangalore on the above lines. Regarding the disbursement of the Provident Fund accumulations to Sri G. Muhammed Haroon, the Commissioner was informed that he may act according to the orders of the Collector of South Kanara, as the case involved related to the treasury defalcation. On these instructions, the Municipal Commissioner, Mangalore has represented that the orders issued in G.O.No.128 L.A. dated 1.2.55 would apply only to cases of subordinates against whom departmental proceedings are pending or are in contemplation, that there were no departmental proceedings pending against Sri G. Muhammad Haroon, but he was kept under suspension as he was arrested by the Police, and that he has passed orders on 14.7.55 allowing Sri G. Muhammad Haroon to retire with effect from 5.2.54. i.e. the date of his

superannuation, on receipt of the reply from the Collector that the individual was discharged while committing the accused to Sessions and that the appeal said to have been filed by Government was not against his acquittal. Regarding the disbursement of the Provident Fund amounts, the Commissioner consulted the Government Pleader, South Kanara who informed the Commissioner that the Provident Fund amount need not be disbursed at the present stage. A copy of the Commissioner's letters C.No. 22534.53 dated 14.7.55, copy of his proceedings C.No. 22534.53 dated 14.7.55 and a copy of the opinion No.41/55 of the Government Pleader, are enclosed.

(3) The instructions in G.O.No. 128 L. A. dated 1.2.55 were issued on this office letter dated 2.2.54 in the same case. The Commissioner's doubt is whether these instructions will apply to the case of Sri Muhammad Haroon, as he was kept under suspension not because any departmental proceedings were pending against him, but because he was arrested by the Police. Though no departmental proceedings were pending against the individual, yet the fact that he was kept under suspension on receipt of intimation of his arrest would indicate that departmental action was under contemplation and such disciplinary action as was necessary would have been taken had he been convicted. Hence, in view of the orders in G.O.No.128 L. A. dated 1.2.55, the action of the Commissioner in having passed final orders permitting the individual to retire from 5.2.54, the date on which he attained the age of superannuation and treating the period as leave to which he is eligible does not appear to be in order. Subsistence allowance upto the date on which final orders were passed i.e. 14.7.55 will also have to be paid to the individual in accordance with G.O.No.128 L. A. dated 1.2.55.

(4) I consulted the Examiner as to whether instructions may be issued to the Commissioner to revise his orders in accordance with the instructions in para 1(2) of G.O.No.128 L. A. dated 1.2.55. A copy of his remarks in his U.O.No.123-1 dated 14.9.55 is enclosed. He doubts as to whether the case in question would be covered by G.O.No.1462 L. A. dated 9.7.45 in which it is stated that final orders should however be made to take effect from the date on which the subordinate attained the age of superannuation. But G.O. No.128 L. A. dated 1.2.55 was issued in supersession of the existing orders on the subject. As the instructions issued in G.O.No.128 L. A dated 1.2.55 are not incorporated again in G.O.No.788 L. A. dated 8.6.55 while confirming the amendment notified in the former the Examiner appears to feel a doubt as to whether instructions as proposed in para 3 above may be issued without a reference to Government. Regarding the disbursement of the provident fund amount, the Examiner is of the opinion that in the absence of an attachment, the withholding of the provident fund amount on account of a possible suit at a future date may not be strictly correct.

(2/ disbursement of the Provident Fund amount to Sri G. Muhammad Haroon.

I request very early orders in the matter

FOR INSPECTOR.

Enclosures:-

1. Copy of letter 22534.53 dated 14.7.55 of the Municipal Commissioner, Mangalore with copies of its enclosures.

2. Copy of the petition dated 29.8.55 of Mohammed Haroon.
3. Copy of Examiner's U.O.123-1 dated 14.9.55.

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ssraj. 27.9.55.

Copy of letter from ~~xxxxxxxxx~~ Commissioner Mangalore Municipality C1/22534/53. dated 14th July 195

Sub:-Establishment - Municipal Council, Mangalore - Sri G.Mohammed Haroon - School Supervisor under suspension - subsistence allowance - payment of.
Ref:-Your letter Roc.No.12229/55, dated 2-7-55 received in this office on 11-7-55.

On receipt of the Inspector's letter Roc.No.12229/55, dated 24-3-55, Sri Mohammed Haroon, Supervisor of Schools, under suspension was again directed to produce a copy of judgment called for from him in this office memo. C1/20328/54 dated 7-8-54. In reply he stated that since the case is now tried in High Court at Madras, all the records pertaining to the case have been transferred, and therefore he is not in a position to produce a copy of the judgment.

It was stated in the letter referred to above that in case it is decided not to take action against Sri Mohammad Haroon, he may be allowed to retire, and Provident Fund closed and other dues paid after consulting the Collector. It was also stated in the Inspector's letter that the subsistence allowance from 5-2-54 should be paid to the individual as per para 2 of G.O.No.128, L.A., dated 1-2-55.

The Collector of South Kanara was addressed in this office letter C1/22534/54, dated 18-4-55 (Copy enclosed) in view of his confidential letter A1/9491/53-3 (c) dated 14-4-53 informing this office that during the course of investigation into the case of defalcation of Government money in the South Kanara District Treasury it was found that Sri Mohammad Haroon had borrowed a sum of Rs.8000/- from Mrs.H.S.Roberts. W/O David Roberts, Accountant, Collector's Office who was involved in the defalcation, on executing a demand promissory note dated 15-10-52 and that the money lent by Mrs. H.S.Roberts cannot be anything other than the Government money etc:, whether he has any objection to close the Provident Fund account of Sri Mohammad Haroon and pay off his dues at this stage, in view of the fact that he is reported to have been discharged by the Special I Class Magistrate, South Kanara on 12-6-54, or whether he desires that the payment of his dues should be deferred till the appeal filed by the Government for the revision of the defalcation case of South Kanara District Treasury is disposed of.

As the instructions contained in G.O.No.128, L.A., dated 1-2-55 govern only the cases of subordinates against whom departmental proceedings are pending or are under contemplation when the subordinate attains age of superannuation, the District Inspector of Local Fund Accounts, South K anara, Mangalore was consulted as to whether Sri G.Mohammad Haroon could be paid any subsistence allowance beyond 5-2-54, the date on which he attained the age of superannuation, as per para 2 of the Government order referred to above since no departmental proceedings were pending or were under contemplation against the individual when he attained the age of superannuation, so that the payment of subsistence allowance if made might not be objected to in audit. It may be stated that the individual was not kept under suspension for any departmental ~~xxxxxxxxxxxxxxxx~~ misconduct but only as per provisions of instructions (1) under F.R.54. The District Inspector of Local Fund Accounts, South Kanara, Mangalore has informed that the matter may be referred to Government. However, in view of the directions contained in your letter Roc.No.12229/55 dated 2-7-55, that the subsistence allowance due to Sri Mohammad Haroon from 5-2-54 should be paid immediately, I have this day passed orders for the payment of subsistence allowance to Sri Mohammad Haroon for the period from 5-2-54 onwards till 12-6-54, on which date he was discharged by the Special I Class Magistrate, South Kanara in his Roc.No.1/54 dated 12-6-54, I may also submit to the Inspector that the subsistence allowance for the subsequent period is not ordered to be paid since the delay in passing final orders is mainly on account of the non-production of the copy of judgment by Sri G. Mohammad Haroon though he was repeatedly asked to produce the same, and even after the threatening order of dismissal

The Collector of South Kanara has informed that at present there is no criminal proceedings pending against Sri G.Mohammad Haroon, and that it is a fact that he was discharged by the Special I Class Magistrate while comitting the other accused to the Sessions and that the appeal filed by the Government is not against the discharge of Sri Mohammad Haroon, but however informed that the Government have a claim on him for the payment of Rs.8000/- which amount he had borrowed from Srimathi H.S. Roberts and that the Government have already filed a Civil suit against Sri D.Roberts and Srimathi H.S.Roberts in the Sub Court, South Kanara. The Collector has further requested me to consult the Standing Counsel of the Municipality whether the payment of Provident Fund amount due to Sri G.Mohammad Haroon could be deferred till the disposal of the above said civil suit, without making the municipality liable for civil action by Sri G.Mohammad haroon. Immediately on receipt of this letter, I addressed the Government Pleader South Kanara whether the payment of Provident Fund amount due to Sri G.Mohammad Haroon could be deferred till the disposal of the civil suit filed by the Government without making the municipality liable for civil action by him. The Government Pleader, South Kanara in his letter dated 15-6-55 (copy enclosed) replied that though normally the Provident Fund amount due to a judgment debtor cannot be attached still it can be attached under certain circumstances and therefore the Collector and the Government have to be addressed whether the Government is going to file a suit against Sri G.Mohammad Haroon on the promissory note or not, and in the above circumstances, it is not advisable to disburse the provident Fund amount to the individual at this stage. I have again addressed the Collector of South K anara whether he has any objection to close the Provident Fund account of the individual and to pay off his dues in the light of the opinion given by the Government Pleader, or whether he desires that the payment of his dues should be deferred till the Government files a suit against the individual on the pronote. I have also sent a reminder to the Collector requesting for an early reply. His reply is awaited

In view of Collector's letter informing that there is no criminal proceedings pending against Sri G.Mohammad Haroon, and also that it is a fact that he has been discharged by the Special I Class Magistrate while committing the other accused and that the appeal filed by the Government is not against his discharge, I have not insisted the production of judgment copy for my perusal and I have passed final orders permitting him to reture with effect from 5-2-54, the date on which he attained the age of superannuation. The period of his suspension from 11-11-53 to 4-2-54 has been treated as leave for which he is eligible i.e. L.A.P. for two months and 17 days and L.H.P., for 8 days. A copy of my proceedings dated 12-7-55 is enclosed.

In view of the Government Pleader's letter that it is not advisable to disburse the Provident Fund to the Individual at this stage, and that the Collector has been addressed in the matter whether he has any objection to close the Provident Fund account of the individual and to pay off his dues, etc., and whose reply is awaited, I solicit instructions from the Inspector of Municipal Councils whether the payment of Provident Fund amount could be closed as per rule 20 of the rules for the working of the Provident Fund maintained by Municipal Councils or reply from the Collector awaited, and acted accordingly.

I request the favour of urgent orders.

Copy of letter of the Municipal Commissioner, Mangalore, Cl.22534/54, d/18.4.55, to the Collector of South Kanara, Mangalore.

Sub:-Treasuries -South Kanara Dt. Treasury - Embezzlement - Sri G.Mohammad Haroon, Supervisor of Municipal Schools, under suspension - Certain information - Requesting.

The Collector in his confidential letter No.A1.9491/53-3(c) d/14.4.53 informed this office that during the course of investigation into the case of defalcation of Government money in the South Kanara District Treasury it was reported that Sri G.Mohammad Haroon had borrowed a sum of Rs.8,000/- (eight thousand only) from Mrs. H.S.Roberts, w/o. Sri David Roberts, Accountant, Collector's office who was involved in the defalcation on executing a demand promissory note d/15.10.52. He has also informed that the investigation has revealed that the money which Mrs. H.S.Roberts lent on promissory note to Sri G.Mohammad Haroon cannot be anything other than the Government money defalcated by her husband although he manoeuvred to get an acquittance other than on the promissory note first executed by him subsequent to the seizure of the said promissory note by the police and that his effort to nullify the promissory note would certainly amount to an effort on his part to defeat the claims of the Government to that amount.

Sri G.Mohammad Haroon has reported that he was discharged by the Special I Class Magistrate, South Kanara on 12.6.54 in C.C.No.1/54 and the I Additional Assistant Sessions Judge, Mangalore has certified that the accused was discharged. However, in view of the recent press reports that the Government have filed an appeal for revision of the defalcation case of the South Kanara District Treasury, instructions were sought for from the Inspector of Municipal Councils and Local Boards, Madras as to whether the individual could be allowed to retire and whether his Provident Fund accumulations could be paid over to him at this stage. The Inspector of in his letter Roc.12229/55 d/24.3.55 has informed that the provident fund account of the individual may be closed and his dues may be paid over to him after consulting the Collector.

In view of your confidential letter A1.9491/53-3 dt.(c).d/14.4.53, I request to be informed whether you have any objection to close the provident fund account of the individual and to pay off his dues at this stage or whether you desire that the payment of his dues should be deferred till the appeal filed by the Government for the revision of the defalcation case of the South Kanara District Treasury is disposed off.

I request the favour of early orders.

Copy of letter from the Govt. Pleader, South Kanara, Opinion No.41/55, dated nil to the Municipal Commissioner, Mangalore.

Sub:- Treasury Embezzlement - Sri G.M.Haroon.
Ref:- Your D.O.letter d/6.6.55.

Sri G.Mohammad Haroon, had borrowed a sum of Rs.8,000/- from Mrs.H.S. Roberts on a pronote. However when he was an accused before the Court he had filed a receipt alleged to have been given by Mrs. Roberts for the abovesaid amount. In this case I remember that the Collector had issued a registered notice to Sri G.M.Haroon, demanding repayment of Rs.8,000/- and Sri Haroon had sent a reply stating that the amount had already been repaid. Therefore according to the Government a sum of Rs.8,000/- is due from him and a suit is liekly to be filed against him for the recovery of this amount.

Though normally the provident fund amount due to a judgment debtor cannot be attached still it can be attached under certain circumstances. Therefore the Collector and the Government will have to be addressed whether the Government is going to file a suit against him on the pronote or not. I will also address the Collector on this point in a day or two. You may also do the same.

In view of the above circumstances, I am of opinion that it is not advisable to disburse the provident fund amount to the party at this stage.

Copy of proceedings of the Municipal Commissioner, Mangalore,
a/c C4/22534/53 d/14.7.55.

Sub:-Establishment - Elementary Education - Sri G.Mohammad Haroon, Supervisor of Municipal Schools under suspension - Retirement from service on his attaining the age of superannuation - Orders.

Read:-1.From the Collector of South Kanara, Mangalore letters A1.8491/53-3(c) d/14.4.53 and A1.11704/55 d/26.4.55.
2. Inspector of Police, Mangalore, letter No.——d/11.11.53.
3.Letter Roc.12229/55 d/24.3.55 and 2.7.55 from the Inspector of Ml.Cls.& Local Boards, Madras.

The Collector of South Kanara, Mangalore had informed that during the course of investigation into the case of defalcation of Government money in the South Kanara District Treasury, it was reported that Sri G. Mohammad Haroon had borrowed a sum of Rs.8,000/- (eight thousand only) from Mrs. H.S.Roberts, w/o. Sri D.Roberts, Accountant, Collector's office and that he was involved in the defalcation on his executing a demand promissory noted d/15.10.52. The Collector had also informed that the investigation had revealed that the money which Mrs. H.S.Roberts, Headmistress, municipal Bastigarden Elementary School lent on promissory note to Sri G. Mohammad Haroon, Supervisor of Municipal Schools, cannot be anything othe than the Government money defalcated by her husband although Sri Mohammad Haroon manoeuvred to get an acquittance other than on the promissory note first executed by him subsequently to the seizure of the said promissory note by the police, and that his effort to nullify the promissory note would certainly amount to an effort on his part to defeat the claims of the Government to that amount.

2. Explanation of Sri G.Mohammad Haroon, Supervisor of Municipal Schools was obtained for having monetary transactions with Mrs. H.S.Roberts, Headmistress, Municipal Bastigarden Elementary School in contravention of the rules relating to personal conduct of officers and servants of Municipal Councils. In his explanation d/24.4.53 Sri G.Mohammad Haroon had admitted that he had borrowed a sum of Rs.8,000/- (eight thousand only) and reported that the amount was repaid on 3.2.53 after obtaining a receipt for the said amount as the promissory note executed by him was not readily available. He also reported that the said receipt had been handed over to the police and that he never knew that Sri D.Roberts husband of Mrs. H.S.Roberts was involved in the defalcation of Government money and further that the money advanced to him by Mrs. H.S.Roberts formed any part of such moneys. Disciplinary action was not instituted against him for contravening the rules relating to the personal conduct of officers and servants of municipal councils as it was considered that action could be taken only when the police case against Mrs. H.S.Roberts is finally closed since the materials were not available to prove whether the money advanced by Mrs. H.S.Roberts does actually belong to Government or whether the transaction was not bonafide, or whether money was actually repaid. It was also considered that it would not be in order to institute departmental proceedings and to express a finding in a matter which was pending enquiry in a Court of Law.

3. However, Sri G.Mohammad Haroon was placed under suspension on receipt of report d/11.11.53 from the Inspector of Police, Mangalore that he had been arrested in connection with Mangalore South Station Cr.No.57/53 under sections 120-B, 420, 467, 268, 477 and 477-A, I.P.C. under instructions from

the Inspector of Police, Crime Branch, Madras with effect from 11-11-53. He was continuing under suspension and on 5-2-54, he attained the age of superannuation and on which date he would have retired from the municipal service in the normal course. Although there were no departmental proceedings pending against him when he attained the age of superannuation, he was not -- permitted to retire with effect from that date as the police case against him was not completed. Subsequently Sri G.Mohammad Haroon reported that he was discharged by the Special First Class Magistrate, South Kanara, in R.G.No.1/52 on 12-6-54. Sri G. Mohammad Haroon was thereupon instructed to produce a copy of the judgment discharging him from the defalcation case of the Govt. money in the South Kanara District Treasury, vide memrandum No.C1-20328-54 dated 7th August 1954. The copy of the judgment was necessary to consider whether there are any adverse remarks which warrant serious notice of and which may warrant his removal or dismissal from service, apart from taking action for having monetary transactions with another subordinate of the council in contravention of the rules relating to personal conduct of officers and servants of municipal councils. Sri G.Mohammad Haroon was afforded ample opportunity to produce the record called for, but he has been evading the production of the said document. Even so, he represented to the Inspector of Ml.Cls.and Local Boards, Madras that this office should have no difficulty in permitting him to retire and pay off his dues when the police case against him ended in his honourable acquittal. In this office Memo.No.C1-22534-53 dated 28-3-55, Sri Mohammad Haroon was informed that the matter was pending consideration for want of a copy of the judgment called for from him, and he was again instructed to produce the document, within three days He did not produce the document as instructed, and he was finally informed that if the document called for is not produced steps would be taken for his disobeyal of orders and he would be dismissed from service vide this office Memo.C1-22534-53 d/4-4-55 Sri Mohammad Haroon thereupon reported that all the records connected with the defalcation of Govt. money in the South Kanara District Treasury have been transferred to the High Court, Madras consequent upon the Govt. filing an appeal for revision of the defalcation case The Collector of South Kanara who was consulted in the matter has informed that Sri G.Mohammad Haroon was discharged by the Special First Class Magistrate while committing the other accused to the Sessions, and that the appeal filed by the Govt. in the High Court at Madras is not against the discharge of Sri G.Mohammad Haroon.

4. However, I do not press for the production of the copy of the judgment for my perusal in view of the Collector's above reply. Taking a lenient view I do not propose to take any action against him at this stage. As this case is not covered by the instructions of Govt. contained in their order No.128 L.A., d/1-2-55 since no departmental proceedings were pending against him when he attained the age of superannuation, he is deemed to have been permitted to retire with effect from 5-2-54, the date on which he attained the age of superannuation. The period of his suspension from 11-11-53 to 4-2-54 is treated as leave for which he is eligible i.e. leave on average pay for two months and 17½ days and leave on half pay for 8 days.

difficulty of [illegible].

Copy of petition dated 29-8-55 from Sri G.Mohammad Haroon, ex-Supervisor of Schools, Matakadakani Road, Mangalore 3 to the Inspector of Mun.Cls.& Local Boards, Madras.

The Commissioner in his proceedings C1-22534-53 dated 14-7-55 has passed orders retiring me from municipal service with retrospective effect i.e. from 5-2-1954. The Commissioner is wrong and his action highly irregular in ordering me to retire from service with retrospective effect.

2. In the ordinary course I should have retired fom service on 5-2-54. There happened to be a police case against me and I was kept under suspension by the Municipal Commissioner on 11-11-53. The Special I Class Magistrate who tried the case ordered my acquittal in C.C.No.1/54 on 12-6-54 and I was honourably acquitted. I informed the Commissioner of the fact in my petition dated 17-6-54. After ascertaining the fact from the Special I Class Magistrate, whose office was located hardly 2 furlongs from the municipal office the Commr. could have and should have ~~xiam~~ raised the suspension order and retired me from municipal ~~office~~service. Instead of taking this simple and honourable course, the Commr went on harassing me to produce a copy of the judgment of the Spl.I Class Magistrate. In the first place, it is not my duty to produce the copy of judgment because the Municipal Act or the rules framed thereunder do not state that such a copy is to be produced. Secondly the Commr. did not pay me even the barest subsistence allowance for months together and I had to face lot of financial difficulties: my family had to starve and the education of my children had to be discontinued. Under these circumstances I informed the Commr. of my inability to furnish the certified copy which would cost well over Rs.50/-. While pleading my inability to meet the cost of the certified copy of judgment I requested the Commr. to address the Asst. Sessions Judge and ascertain facts regarding my exoneration. The Commr. addressed the Asst.Sessions Judge officially and he was informed that I had been honourably discharged. The

report of the Asst.Sessions Judge is at least sufficient authority for the Commr. and he could have taken action to retire me immediately on the receipt of the intimation.

3. In my subsequent petition I requested the Commr. explaining the hardship I am undergoing and requested him to issue orders of my retirement so as to enable me to eke out my livelihood. My personal representations to the Commr. and Office Manager had had no effect. The Commr. has passed his orders dated 14-7-55 without my producing the copy of judgment of which much is made of in the orders; if the said orders could issue on 14-7-55. I submit that he could have very well done this on 17-6-54, the earliest date on which I intimated my discharge or at least immediately he was informed by the Asst.Sessions Judge in August 1954. I repeatedly went to office and saw the Manager and requested him and pleaded with him my difficulties but I was put off every time on some ground or other.

4. Due to the delay in proceedings of my retirement, I was obstructed from doing any work or taking up any job which is against conduct rules as I was under suspension and hence in service. I should not be penalised for any delay on the part of the Commr. in passing orders. I have not been paid any part of my salary from the date of my suspension on 11-11-53 to 14-7-55, the date of final orders of retirement except the subsistence allowance from 11-11-53 to 4-2-54 at the time, and from 5-2-54 to 12-6-54 subsequent to the orders of the Commr. dated 14-7-55. I request the Inspector of Ml.Cls. and Local Boards may be pleased to direct the Commr. to disburse to me the full salary and allowances up to the

5. The suspension was ordered on the alleged report of the police and it was not followed by any departmental charges as contemplated under the Conduct Rules or the Fundamental Rules. The police charge ended in my honourable acquittal. Had it been a departmental charge I would have been immediately re-instated to service in the ordinary course and then asked to retire. The same principle should have been adopted and applied in the present case also which the Commissioner has totally failed. At any rate I submit that I am legally entitled to receive my full pay and allowances for the entire period.

6. In the proceedings dated 14-7-1955, the Commissioner has treated the period of suspension from 11-11-1953 to 4-2-1954 as leave but the leave salary has not been drawn and disbursed to me so far even though it is more than one and half months of the orders. My provident fund account has not been closed and disbursed to me. My gratuity has not been sanctioned and disbursed to me. I do not know what special reasons persist unless it is the view to unnecessarily harass me and put me to untold miseries.

7. I therefore request your goodself to view my case sympathetically and order the date of retirement to take effect from the date of Commissioner's orders viz., 14-7-1955 and cancel the retrospective effect. I also beg to request that I may be given full salary and allowances till 14-7-1955, the date of order of retirement

8. I have put in a total service of 34 years in the department without any belemish, and I deserve certain sympathy at the hands of my superiors and not this sort of harassment. I therefore request you to please instruct the Commissioner to disburse the amounts due to me urgently.

Yours faithfully,

G.MUHAMMAD HAROON.

/true copy/

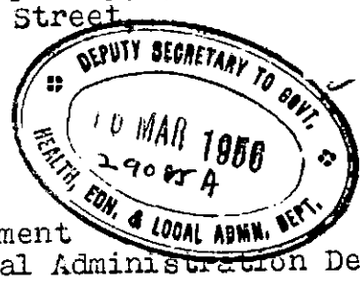
Copy of U.O.No. 120-1 dated 14-9-55 of the Examiner of Local Fund Accounts, Madras

The individual attained the age of superannuation on 5-2-1954 and it is not clear whether the case will be covered by the orders in G.O.No. No.1462, L.A., dated 9-7-1955 or whether it will be governed by G.O.No.128, L.A., dated 1-2-1955. The draft amendment issued in G.O.No.128, L.A., dated 1-2-1955 to the rules relating to establishments under municipal councils was confirmed in G.O.No.788, L.A., dated 8-6-1955. Even if the preamble leading to the draft amendment should be applicable to the case in question, it is doubtful whether orders as proposed may be issued without a reference to Government in view of the amendment notified.

As regards the closure of the Provident Fund Account in the absence of a stay order from a Court of law or an attachment by a civil suit, the withholding of the provident fund amount may not be strictly correct. As the payment of the amount cannot also be unduly delayed on account of a possible suit at a future date, the matter may perhaps be referred to Government.

From: G. Muhammed Haroon,
Retd. School Supervisor,
of Mangalore Municipality,
Camp 8, Oil Monger Street,
Royapettah Post,
M A D R A S-14.

E2
What's stage is now file
16/3



To

The Secretary to Government
Health, Education & Local Administration Department,
M A D R A S.

Sir,

I am a retired servant of Mangalore Municipal Council having served as a teacher, Headmaster and Supervisor of Schools in my 35 years of service. Even though I have been officially retired by the Commissioner in his proceedings dated 14-7-1955 I have not so far been paid my full salary and the accumulations in the provident Fund Account, till date, and I submit the following relevant facts for favour of your kind consideration and orders.

2. While in service I was kept under suspension by the Commissioner Mangalore Municipality, in his proceedings C1/22534/53 dated 12-11-1953 from the forenoon of 11-11-1953 on the allegation that I was involved in the Treasury Defalcation case. In the normal course I was due to retire from Municipal service on 5-2-1954 and when I was expecting orders of retirement the Commissioner issued orders in his proceedings C1/22534/53 dated 5-2-1954 informing me (under instructions from the Inspector of Municipal Councils, Madras Roc. 3402/54-133 dated 2-2-1954) that I will not be retired pending disposal of the police case and the departmental action. It will therefore be clear that I was not allowed to retire on attaining superannuation but continued in service pending conclusion of the final proceedings both by the court and the department. A copy of the proceedings of the Commissioner is enclosed here with for kind perusal.

3. On 12-6-1954 the trying Magistrate honourably discharged me in the police case and I represented the Commissioner both in person and writing that I had been acquitted and requested him to retire me and enable me to seek employment elsewhere. I also requested for the disbursement of subsistence allowance. From 5-2-1954 I had not been paid my subsistance allowance. The Commissioner informed me that he had referred the matter to the Government, and asked me to await orders.

4. The Government were pleased to issue detailed instructions in their Order No.128,L.A. dated 1-2-1955 as to how a person due to retire should be treated when charges are pending against him. The orders stated interalia that the subordinate against whom there are serious charges should be informed that he will not be allowed to retire on the dated on which he is due to retire and that subsistence allowance should be paid to him till the date on which final orders are passed and if he is eventually exonerated he should be granted full pay upto the date on which the orders are passed and that he should be retired with effect from that date. The Commissioner had specifically in his proceedings C1/22534/54 dated 5-2-1954 informed me that I would not be permitted to retire on the date of superannuation in view of the police case against me. Therefore I continued to be in service till the date on which he finally issed orders i.e. 14-7-1955. I personally represented these matters to the Commissioner and also in writing but I was told that the Government order No.128 L.A. dated 1-2-1955 was not applicable in my case.

5. I submitted my representations to the Inspector of Municipal Councils through the Commissioner on 27-6-55 and requested that atleast my subsistence allowance from 5-2-1954 till date may be drawn and disbursed to me as I was suffering untold hardship. The Inspector of Municipal

Councils was pleased to issue orders in his proceedings Roc.12229/55 dated 12-7-1955 (copy enclosed) sanctioning the subsistence allowance. The Commissioner immediately passed orders sanctioning the subsistence allowance for the period 5-2-1954 to 12-6-1954 instead of from 5-2-1954 to 14-7-1955 and also orders of retirement from 5-2-1954 instead of 14-7-1955 the date of orders.

6. I submitted my appeal dated 29-8-1955 to the Inspector of Municipal Councils and in his Roc.No.12229/55 dated 2-9-1955 (copy enclosed) I was informed that the matter was under correspondance with the Examinor of L.F. Accounts. I also submit herewith a copy of the orders of the I.M.C. on my further representations dated 16-11-1955 which says that the matter has been referred to the Government.

I have not received so far any order on my representations to the I.M.C. even though it is ~~about~~ over seven months. There are twelve members in my family and apart from me there is no other earning member. I have suffered untold hardshipp during all these months for want of my salary and provident fund accummlations which is generaly refunded on retirement. I therefore submit this representation direct to the Government with the request that the Government may be pleased to consider my case sympathetically and pass early orders for:- a) disbursement of my provident fund accumulations which are not subject to any liability under the rules; b) disbursement of full pay for the period from 5-2-1954 till date of orders passed by the Commissioner in G.O.No.4-7-1955 in view of the clear instructions contained in G.O.No.128 dated 1-2-1955; c) and revise the date of retirement from 5-2-1954 mentioned in the Commissioner's proceedings to 14-7-1955 the date of his order.

For which act of kindness I shall every pray.

Yours faithfully,

C1/22534/53.

Very Emergent.

Proceedings of the Commissioner, Mangalore Municipality, Mangalore dated 5th. Feb. 1954.

Sri. L.C. Richard, M.A.

******

Sub: Establishment - Elementary Education - School Supervisor - Sri. G. Muhammed Haroon - Suspension not permitted to retire intimation of.

Read: 1. This office proceedings dated 13-11-53.
2. Letter Roc.3402/54-B3 dated 2-2-54 from the I.M.C Madras-

*****

Sri, G.Muhammed Haroon, Supervisor of Municipal Schools under suspension will not be permitted to retire on the date of his compulsory retirement i.e. on 5-2-54 pending conclusion of the final proceedings both by the court and the department.

As regards payment of subsistance allowance from the dated of compulsory retirement till the date of final orders by the court and the department, orders will be issued in due course.

emorandum of the Inspector of Municipal Councils & Local Boa
Madras-1.

Roc. 12229/55 dated 12-7-55.
****

Sub: Establishment - Municipal Councils - Mangalore Sri. G. Muhammed Haroon - School Supervisor under suspension Subsistence allowance - payment of.

Ref: From Sri. G. Muhammed Haroon, Petition dated 27-6-55.
*****

Sri. G. Muhammed Haroon, School Supervisor(under suspension) Mangalore Municipality is informed that the Municipal Commissioner Mangalore has been advised regarding payment of subsistence allowance. He may apply to him.

Sd/

For Inspector.

Tc

Sri. G.Md. Haroon.
School Supervisor(under suspension)
Mattadakani Road, Mangalore-3.

Copy to the Municipal Commissioner, Mangalore Through Chairman
(In continuation of this office Roc.12229/55 d. 2-7-55)

Memorandum of the Inspector of Municipal Councils & local Boards Madras-1.

Roc. 12229/55 dated 2-9-1955.

*****

Sub: ESTABBISHMENT- Mangalore Municipal Councils - Sri. G. Muhammed Haroon School Supervisor under suspension - Instructions.

Ref: From Sri. G. Muhammed Haroon, Dated 29-8-1955

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Sri. G. Muhammed Haroon is informed that the matter is under correspondence with the Examinor of local Fund Accounts and that orders will issue in due course.

Sd/

For Inspector.

hahRs2-9

To Sri. G.Muhammed Haroon, Ex-Supervisor of Schools, Mattakakani Road, Mangalore.

Sub:Establishment - Mangalore Municipality Council - Sri. G. Md Haroon School Supervisor - payment of subsistence allowance Request of.

Ref:- From Sri. G. Muhammed Haroon, petition dated 16-11-55.

The petitioner is informed that the matter is under correspondence with Government and that necessary orders will be issued in the matter on receipt of their reply.

For Inspector.

To
Sri. G.Md. Haroon,
Ex-Supervisor of Schools, Mangalore Municipal Council,
No.87, Bangaru Naicken St., Mount Road Madras

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True Copy.

Sub: Establishment-Elementary Education-Municipal Council, Mangalore-Sri G.Muhammad Haroon, School supervisor under suspensio Permission to retire-Disbursement of Provident Fund amount- Instructions issued.

Ref: From the I.L.B.No.12229/55 dated 24-9-55.

G.O.Ms.No. 530 Edn. dated 21-3-56

The Inspector of Municipal Councils and Local Boards is informed that as no orders were specifically passed by the Commissioner, Mangalore Municipality extending the service of Sri Muhammad Haroon beyond 5-2-54, the date of his superannuation, there is no question of applying the orders either in G.O.No.1462 L.A. dated 9-7-45 or G.O.No.128 L.A. dated 1-2-55 to his case. There is therefore no need to ask the Commissioner to revise his proceedings dated 14-7-55 and to issue fresh orders strictly in accordance with the instructions in para 1(2) of G.O.No.128 L.A. dated 1-2-55.

2.The Provident fund amount due to

Sub: Establishment - Mangalore Ml. Cl. - Sri Md. Haroon - School Supervisor under suspension - Permission to retire.

Ref: From the I.L.B., Roc.12229/55, dated 24-9-1955.

Sri G. Md. Haroon, School Supervisor, Mangalore Mpty. was kept under suspension by the Ml. Commr., Mangalore on receipt of a report from the Inspr. of Police that he had been arrested in connection with the South Kanara Treasury defalcation case. It appears that Sri G. Haroon had borrowed a sum of Rs.8000 from a school teacher, Mrs. H.S. Roberts, whose husband was the accused in the case. While the case was going on Sri Haroon attained the age of superannuation on 5-2-54. The Supervisor was not allowed to retire with reference to the instructions contained in G.O.128, L.A., dated 1-2-55. The Commr. passed orders on 14-7-55 retiring Sri Haroon with effect from 5-2-54, on receipt of a report from the Asst. Sessions Judge in August 1954 that he was discharged in the defalcation case. He was not also paid the Provident Fund accumulations on the advice of the Govt. Pleader who considered that it would be better not to disburse the same. The Government had filed an appeal in the High Court but it was not against the acquittal of the supervisor.

2 With reference to the instructions in G.O. No.128, L.A., dated 1-2-55 the Supervisor ought to have been retired only from 14-7-55, the date of passing of final orders by the Commr. and the Supervisor ought to have been paid also full salary and allowances upto that date In his proceedings dated 14-7-55 the Commr., Mangalore Mlty. has stated that the instructions in G.O.No.128, L.A., dated 1-2-55 would not apply to the case of Sri Haroon and

accordingly permitted him to retire with effect from 5-2-54. He has also ordered that the period of the suspension from 11-11-1953 to 4-2-54 be treated as leave for which he is eligible i.e. L.A.P. for 2 months and 17 days and on half pay for 8 days. The Supervisor appealed to the I.L.B. against the orders of the Commr. He requested that the Commr. should be asked to revise his proceedings dated 14-7-55 so that he may be paid full salary and allowance till 14-7-55, the date on which final orders were passed by the Commr. The Inspr. of Ml. Cls. and Local Boards has supported the request of the petitioner.

3. The reasons adduced by the Commr. for not applying the instructions issued in G.O. 128, L.A., dated 1-2-55 to the case of Sri Haroon is that there was no departmental proceedings pending against him when he attained the age of superannuation and that the Supervisor was suspended only on the arrest by the Police and not for any departmental action. This view seems to be incorrect. As rightly observed by the I.L.B. in para 3 of his letter it would be enough even if departmental action is contemplated to be taken in the matter. The I.L.B. states that departmental action would have to be taken against the Supervisor had he been convicted. It is evident from the Commr.'s proceedings dated 14-7-55 itself that departmental action against the Supervisor was contemplated but could not be taken as the case was pending in a court of law. The I.L.B. states that the contention of the Commr. that the instructions in G.O. No.128, L.A., dated 1-2-55 will not apply to the case of Sri Haroon is not correct. He recommends that the Commr. may be asked to revise his proceedings dated 14-7-55 and issue fresh orders

para.1(2) of G.O. ~~1282~~ 128, L.A., dated 1-2-55 and that he may be asked also to disburse the Provident Fund amounts to Sri G. Haroon. The recommendation of the I.L.B. may be accepted.

4. The Examr. of L.F. Accounts who was consulted by the I.L.B. has stated that while in G.O. 128, L.A., dated 1-2-55 publishing the draft amendment there is a preamble ~~was~~ leading to the draft amendment, in the G.O. 788, L.A., dated 8-6-55 confirming the amendment it has been omitted and so it is doubtful whether the instructions issued in G.O. 128, L.A., dated 1-2-55 could be made applicable to the case. It is however seen from the G.O.788, L.A. dated 8-6-55 that the omission of the preamble is ~~not~~ ~~it appears~~ that a preamble is usually necessary only while introducing a draft amendment to any rules and such preamble is not necessary in confirming the draft amendment. So apparently the preamble leading to the draft amendment issued in G.O. No.128, L.A., dated 1-2-55 was omitted in G.O.No.788, L.A. confirming the amendment. The Examiner may be informed accordingly Law may see on this point.

5. It is noticed that Sri Haroon has been subjected to much hardship as complained by him on account of the Commr. having delayed passing of orders as indicated in G.O.No.128, L.A., dated 1-2-55. He was suspended from 11-11-53. He attaine the age of superannuation on 5-2-54. Sri Haroon informed the Commr. on 17-6-54 that he was discharge by the Spl. I Class Magistrate in Rc.1/52 dated 12-6-54. The Commr. could have verified whether this fact was correct from the nearby Magistrate's court and passed order. Instead, the Commr insisted upon the Supervisor getting a copy of the judg

The petitioner could not produce it on account of the cost involved and also as the records had been sent to the High Court. Ultimately the Commr. ascertained from the Asst. Sessions Judge on August 1954 that the Supervisor was discharged but even then he did not pass orders but delayed it till 14-7-55 i.e. nearly one year, with the result that now the supervisor has to be paid full salary as per the instruction in G.O.No.128, L.A., dated 1-2-55 from 11-11-53 upto 14-7-55. The Commr.'s attention may be invited to this fact and he may be asked to state the circumstances under which he had failed to pass immediate orders in the matter with the result that the Ml. Cl. has been put to some avoidable expenditure by way of payment of full salary to the teacher after his retirement for a period of more than 1½ years.

For orders. Law may see with reference to para. 4 above. Public and Finance may also see the case for remarks.

12.11.55

the file passed on to Finance.

RPS
23.11.55

HPa
25.11.55

Fin
24/11/55.

Finance (C.S.R.) Dept.

Sri. Haroon, School Supervisor, Mangalore Municipality was kept under suspension by the Municipal Commissioner on receipt of a report from the Inspector of Police that he had been arrested in connection with the South Kanara Defalcation case. While the case was going on he attained the age of superannuation on 5-2-'54. He was discharged by the Special I Class Magistrate on 12-6-'54 & the Commissioner did not take action to pass orders immediately regarding his retirement. But on 14-7-'55 ~~the Commissioner~~ he ordered his retirement with effect from 5-2-'54, the date on which he attained the age of superannuation and treated the period of suspension from 11-11-'53 to 4-2-'54 as leave for which he was eligible. The Inspector of Local Boards and Municipal Council has stated that with reference to the instructions in G.O. 128, L.A., dated 1-~~10~~-2-'55, which were confirmed in G.O. 1788, L.A., dated 8-6-'55 the action of the Commissioner in having retired the officer with effect from 5-2-'54 is not in order. HELA propose to accept the recommendation of the I.L.B. to direct the Commissioner to revise his orders in accordance with the instruction s in para 1-2 of G.O. 128, L.A., dated 1-2-'55. Prior to the issue of the orders in G.O. 128, L.A., dated 1-2-'55, cases of Government servants under suspension who attained the age of superannuation

had to be dealt with in accordance with the instructions in G.O. 1462, L.A., dated 9-7-'45. The provisions in the above G.O. were that, a Servant of the Local Board or Municipal Council who is due to retire on attaining the age of superannuation should not be allowed to do so when any Departmental proceedings are pending against him or under contemplation. But he should not however be retained in service on this ground after the date on which he attains such age but should be directed to hand over charge and wait for orders and final orders on the departmental proceedings should however be made to take effect from the date on which he attained the age of superannuation. The above orders were based on similar orders in respect of Government servants in G.O. 818, Public (Ser.,) dated 6th August, 1934. The above orders were questioned in the case of one Sri. Sambiya, Tahsildar, Guntur District, and it was held by the High-Court that a Government servant automatically retires on attaining the age of superannuation under the provisions in F.R. 56 unless his services were specifically extended and that the executive order directing him to hand over charge and await orders was not valid. Persuant to this judgment it was ordered in G.O. 2311, Public (Ser.), dated 28-8-'53 while a Government servant is placed under suspension he should specifically be informed that he will not be allowed to retire on the date on which he is due to retire pending the conclusion of the departmental proceedings, and the instruction under F.R. 56(c) was also amended to provide that if the Government servant is finally exonerated, he should be considered to have been on extension of service from the period of compulsory retirement to that on which he was actually retired. The orders in G.O. 128, L.A., dated 1-2-'55 follow only the above provisions.

In the circumstances, it is submitted that there is no question whether the case of Sri. Haroon should be dealt with under the orders in G.O.1462, L.A., dated 9-7-'45 or with reference to the orders in G.O. 128, L.A., dated 1-2-'55. In asmuch as the service of Sri. Haroon were not specifically extended beyond 5-2-'54, the date of his superannuation, he

irrespective of any subsequent orders passed by the Commissioner. ~~The above is the legal position.~~
The above is the correct legal position.

Public Dept may see orders

8/12/55
Pay
Secretary

8/12. Pub (Ser) HELA

Public (Ser. A) Dept.

(Last seen on pp4-5 ante)

The subsequent note of Finance on pp5-7 above may be perused. The views of Finance may be agreed to in this Dept and the file returned to HELA

APS.
21.12.55

APS
21.12.55

HELA

H.F.L.M.E.J

ASSISTANT SECRETARY TO GOVT.
2 DEC 1955
EDN. & LOCAL ADMN. DEPT.

The notes of Finance and Public on pp4-7 ante may be perused.

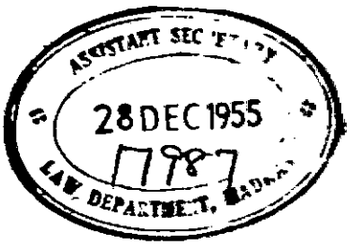
The may be sent to Law for remarks as already marked on p4 ante.

26.12.55

E V

LAW DEPARTMENT.

Page 1 of G.O.No.128, L.A. dated 1-2-1955 contains instructions of the Government regarding the grant of permission to officers of the Municipal Councils and Dist.Boards to resign or retire from service either on application of the officers or on attaining the age of superannuation while disciplinary proceedings are pending against them or are in contemplation. This is not a preamble. In order to enforce those instructions, an amendment to rule 14 of the Rules relating to the establishments under Municipal Councils ~~were~~ was found to be necessary, and this was published in the notification at p.2 of the G.O. The draft amendment was later confirmed in G.O. No.788, L.A. dated 8-6-55 at (L). The amendment issued at (L) is thus only a consequence of the instructions issued at p.1 of (X) and is for the purpose of enabling those instructions, to be put into practice. Hence it is not necessary that those instructions should be repeated at the time of confirming the amendment. Wherever action is contemplated according to the instructions at p.1 of (X) rule 14 as amended in the notifications at (L) will have to be applied.



The Law Department's note above is with reference to para 4 of this Department's note at page 3 ante. The Examiner of Local Fund Accounts had expressed a doubt whether the orders in G.O.No.128 L.A. dated 1-2-1955. could be made applicable to this case. Law Department have held that the instructions in G.O.No.128 L.A. dated 1-2-1955 as confirmed in G.O.No.788 L.A. dated 8-6-1955 are applicable to this case.

ment seems to be that as no orders have been specifically passed by the Commissioner extending the service of Sri Haroon beyond 5-2-54, the date of his superannuation, there is no question of applying the orders either in G.O.No.1462 L.A. dated 9.7.1945 or the orders in G.O.No.128 L.A. dated 1.2.1955 to his case.

3. Law may be requested to advise whether the view of Finance may be accepted and the I.L.B. told that there is no need to ask the Commissioner to revise his proceedings dated the instructions in paragraph 1(2) of G.O.No.128 L.A. dated 1.2.1955. The I.L.B. may however be informed that the provident fund amount due to Sri Haroon may be disbursed.

by amendment in G.O.No.788, L.A., dated 8-6-55. In other words, if action is proposed to be taken against a servant of a local body for a serious charge entailing dismissal and if the said subordinate is about to retire on superannuation, the said subordinate may be retained in service beyond 55 years with the previous sanction of the State Government. It was not the view of this Department that G.O. at (X) as confirmed by the G.O. at (L) would apply to this case as stated by H.E.L.A. at A on pre-page.

Sri Mohammad Haroon, School Supervisor, Mangalore Municipality was suspended with effect from 11-11-1953. He attained the age of superannuation on 5-2-1954. The I.L.B has stated at p.1 c.f. of (X) that the Municipal Commissioner was informed that the Supervisor should not be required or permitted to retire on his reaching the date of compulsory retirement, but should be retained in service until the enquiry into the charge was over and a final order was passed. The Commissioner Mangalore Municipality has also stated at X on p.9 c.f. that Sri Haroon was not permitted to retire with effect from 5-2-1954 as a police case against him was not completed then. This was presumably in conformity with G.O.No.1462, L.A., dated 9-7-1945. But according to rule 14 of the Establishment Rules under Municipal Councils no officer or servant of a Municipality shall be retained in service after he has attained the age of 55 years. At the time when Sri Haroon was suspended and when he reached the age of superannuation. there was no provision by which he could be ordered to continue in service beyond 55 years because only in 1955 the proviso to rule 14 was added conferring such a power for retention in service of a Municipal Servant beyond 55 years with the previous sanction of the State Government. In pursuance of this provision no order has so far been passed and therefore the position is that as no order retaining

Sri Haroon in service after he attained the age of super-annuation was passed he should be deemed to have retired with effect from 5-4-54 when he attained the age of super-annuation. The position stated by Finance is, therefore, correct.

8.3.56

HELA

H.E.L.A. Dept. (E.2.).

The notes of Law above may be perused.

The views of Finance in their notes on pp 5-7 ante have been agreed to, by Public and Law. For orders whether the I.L.B. may be informed accordingly. If so, the draft order below is for approval. Attention is invited to the reminder petition from Sri. M. Muhammad Haroon on pp 15-19 c.f.

9/ 17/3/56. No fresh point has been brought out in the representation.

CA 19.3.56

CPS 20.3.56